REMARKS

Applicants respectfully request reconsideration of the above-referenced U.S. Patent application. No claims have been amended, added, or cancelled. Therefore, claims 5-8, 10-14, and 16-18 are pending.

Claim Rejections - 35 U.S.C. § 103

Claims 5-7, 10, 14, and 16-18

Claims 5-7, 10, 14, and 16-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,058,102 issued to Drysdale et al. (*Drysdale*) in view of U.S. Patent No. 6,452,905 issued to Smith et al. (*Smith*). Applicants submit that these claims are not rendered obvious by *Drysdale* and *Smith* for at least the following reasons.

Claim 5 recites the following:

> maintaining a plurality of **service level agreements (SLAs) at a first switching point**, each SLA having a corresponding minimum data rate;
> transmitting data packets corresponding to each SLA at or above the minimum data rate in accordance with the respective SLA;
> **receiving a message from a second switching point at the first switching point to indicate that traffic between a source and a destination is congested**; and
> adjusting a data rate at which packets corresponding to an SLA, destined for the destination, are output from the first switching point in response to receiving the message to reduce the congestion.

Thus, Applicants claim maintaining, at a first switching point, a plurality of service level agreements, and receiving a message from a second switching point to indicate that traffic is congested between a source and a destination. Claims 10, 14, and 16 recite similar limitations directed to maintaining a plurality of service level agreements, and receiving a message to indicate that traffic is congested.

Drysdale discloses having probes in a network system, at each endpoint user site of a transmission path in the network. See col. 4, lines 32 to 35. The probes provide a **service level**

analysis, which *Drysdale* refers to as an SLA, the analysis to determine whether a service level is being maintained between the end user sites. See col. 1, lines 36 to 37, and col. 2, lines 32 to 35. Applicants respectfully point out that the service level analysis of *Drysdale* is not a service level agreement as recited in claims 5, 10, 14, and 16, even though *Drysdale* chose to designate its service level analysis by the same acronym as the service level agreements recited in claims 5, 10, 14, and 16. Thus, *Drysdale* fails to disclose or suggest maintaining **service level agreements** at a switching point.

Even assuming that *Drysdale* discloses the use and maintenance of service level agreements at a switching point, which Applicants do not concede, *Drysdale* fails to disclose or suggest receiving a message at a first switching point from a second switching point to indicate traffic is congested. *Drysdale* suggests that its two probes at the endpoints of the network will exchange data. See col. 6, line 66 to col. 7, line 8. Whether or not the data exchanged between the probes is a "message to indicate that traffic between a source and a destination is congested" as claimed, which Applicants do not concede, the probes are simply not switching points. The probes merely reside in the system at the endpoints to monitor transmission between the endpoints. Thus, *Drysdale* fails to disclose or suggest the invention as recited in claims 5, 10, 14, and 16.

Smith is cited as disclosing "receiving the feedback of congestion for reducing the flow." See Office Action at page 2. Without needing to characterize or respond to the Office Action's characterization of *Smith*, Applicants submit that *Smith* fails to cure the deficiencies of *Drysdale* set forth above. Because *Drysdale* and *Smith* fail to disclose or suggest, either alone or in combination, maintaining service level agreements, and receiving at a first switching point a

message from a second switching point to indicate traffic is congested, as recited in claims 5, 10, 14, and 16, Applicants submit that these claims are not rendered obvious by *Drysdale* and *Smith*.

Claims 6-7 and 17-18 depend from claims 5 and 16, respectively. Because dependent claims necessarily include the limitations of the claims from which they depend, Applicants submit that these claims are not rendered obvious by the cited references for at least the reasons set forth above.

Claims 8 and 13

Claims 8 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Drysdale* and *Smith*, and further in view of U.S. Patent No. 6,452,915 B1 issued to Jorgensen et al. (*Jorgensen*). Applicants submit that these claims are not rendered obvious by *Drysdale*, *Smith*, and *Jorgensen* for at least the following reasons.

Claims 8 and 13 depend from claims 5 and 10, discussed above. Because dependent claims necessarily include every limitation of the claims from which they depend, dependent claims cannot be rendered obvious by the relied-upon references when the relied-upon references fail to disclose or suggest each and every element of the claims from which they depend. As set forth above, *Drysdale* and *Smith* fail to disclose or suggest each and every element of claims 5 and 10. *Jorgensen* fails to cure the deficiencies of *Drysdale* and *Smith*. Therefore, Applicants submit that claims 8 and 13 are not rendered obvious by *Drysdale*, *Smith*, and *Jorgensen* for at least the reasons set forth above with respect to claims 5 and 10.

Unaddressed Claims 11 and 12

Claims 11 and 12 were listed on the Office Action Summary as being rejected, however, the Office Action fails to address the grounds on which these claims were rejected. MPEP

§ 2142 states that to establish a prima facie case of obviousness the Examiner must set forth evidence sufficient to show the following three criteria:

> First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations**. (Emphasis added)

Because the Office Action fails to even address the grounds on which the claims 11 and 12 were rejected, Applicants submit that evidence has not been set forth to establish where the cited references are purported to teach or suggest all the claim limitations as required by MPEP 2142. Therefore, a prima facie case of obviousness has not been established.

Even assuming that a prima facie case had been set forth in the Office Action, Applicants submit that claims 11 and 12 are not rendered obvious by the cited references for at least the reasons set forth above. Specifically, claims 11 and 12 depend from claim 10, and thus necessarily include every limitation of claim 10. *Drysdale*, *Smith*, and *Jorgensen* fail to disclose or suggest, either alone or in combination, at least maintaining service level agreements, and receiving at a first switching point a message from a second switching point to indicate traffic is congested as recited in claim 10, as discussed above. Therefore, the cited references cannot render obvious the invention as recited in claims 11 and 12.

Conclusion

For at least the foregoing reasons, Applicants submit that the rejections have been overcome. Therefore, claims 5-8, 10-14, and 16-18 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application.

Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
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